1951

State of Utah v. Fred Pettit Goode : Brief of Appellant

Utah Supreme Court

Clinton D. Vernon; Brigham E. Roberts; Allen B. Sorensen; Attorneys for Appellant;

Case No. 7727

In the Supreme Court
OF THE
State of Utah

STATE OF UTAH,
Plaintiff and Appellant,

vs.

FRED PETTIT GOODE,
Defendant and Respondent.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Statutes Cited

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BRIEF OF APPELLANT

PRELIMINARY STATEMENT

The figures in parentheses refer to the page numbers of the record. The parties will be referred to by their designation in the trial court.

This is an appeal by the State of Utah from an order made after judgment in a criminal case directing the Superintendent of the Utah State Hospital at Provo, Utah, to discharge and surrender the person of Fred Pettit Goode, the defendant herein, to an appropriate agent of the Veterans' Administration for the purpose

of transferring said defendant to the Veterans' Administration Hospital at Sheridan, Wyoming.

This appeal is authorized by the provisions of *Section* 105-40-4 (3), *Utah Code Annotated 1943.*

The trial court in making the order purportedly acted under the provisions of *Section* 85-7-63, *Chapter* 113, *Laws of Utah 1951,* which became effective May 8, 1951. The State contends on this appeal that the provisions of this act and particularly the foregoing section do not apply to defendants in criminal cases who are confined by order of court in the Utah State Hospital pursuant to the terms of *Sections* 105-25-15 and 16, and *Chapter* 49, *Title* 105, *Utah Code Annotated 1943.*

STATEMENT OF FACTS

The defendant was duly charged by Information of the crime of Rape in that he raped his own daughter, a female child four years of age (1). The defendant filed notice that he intended to rely upon insanity as a defense (2). After trial on February 3, 1949, the court found the defendant not guilty of rape by reason of insanity (3). Thereupon the District Attorney signed a complaint charging that the defendant was then insane and thereupon a hearing was held concerning the then insanity of the defendant. Doctors Roy A. Darke and William D. Pace testified concerning the insanity of the defendant and made out their certificate wherein they concluded he was insane (5). Thereafter the court found

that the defendant was in fact insane at that time (8) and entered its order that the defendant be committed to the Utah State Hospital.

On March 26, 1951, the mother of defendant filed a petition asking that the court order the defendant transferred to the Veterans' Hospital at Sheridan, Wyoming. A hearing was held before the Honorable Clarence E. Baker on the 11th day of April, 1951, wherein evidence was introduced on behalf of the defendant concerning the advisability of transferring the defendant to the said Veterans' Hospital. The reason assigned was that more adequate facilities and more personal treatment could be afforded the defendant there than in the Utah State Hospital. No contention was made by the mother of the defendant or by any of the witnesses that the defendant had been restored to his sanity. (Dr. C. H. Hardin Branch testified that as a matter of fact the defendant seemed to be slipping back a little and that certainly he had not shown any improvement (33)).

The trial court took the matter under advisement and on the 12th day of May, 1951, entered its Findings of Fact, Conclusions of Law and Order wherein he found that the defendant under the terms and provisions of *Section* 85-7-63, *Chapter* 113, *Laws of Utah 1951,* should be transferred to the Veterans' Hospital for treatment (50-54).

STATEMENT OF POINTS RELIED UPON

POINT I.

THE TRIAL COURT ERRED IN HOLDING THAT THE PROVISIONS OF CHAPTER 113, LAWS OF UTAH 1951, APPLIED TO THE DEFENDANT, A PERSON COMMITTED TO THE UTAH STATE HOSPITAL, UNDER THE CODE OF CRIMINAL PROCEDURE OF THE STATE OF UTAH.

ARGUMENT

POINT I.

THE TRIAL COURT ERRED IN HOLDING THAT THE PROVISIONS OF CHAPTER 113, LAWS OF UTAH 1951, APPLIED TO THE DEFENDANT, A PERSON COMMITTED TO THE UTAH STATE HOSPITAL, UNDER THE CODE OF CRIMINAL PROCEDURE OF THE STATE OF UTAH.

The only proposition which the State desires to raise on this appeal is that *Chapter* 113, *Laws of Utah 1951,* has no application whatsoever to a person committed to the Utah State Hospital under the provisions of the Code of Criminal Procedure. *Section* 105-25-15, *Utah Code Annotated 1943,* in so far as material here provides as follows:

> "Upon a verdict of not guilty by reason of insanity being rendered by a jury, the court shall determine whether or not the defendant has fully recovered his sanity, and the defendant shall be remanded to the custody of the sheriff until his sanity shall have been finally determined in the manner prescribed by law. If the defendant is committed to a state hospital he shall not be

> released from confinement unless and until the court which committed him, or the district court of the county in which he is confined, shall, after notice and hearing, find and determine that his sanity has been restored."

The defendant here was found not guilty of the offense with which he was charged by reason of his insanity and after such verdict inquiry was made as to his then mental condition by the filing of a complaint by the District Attorney and the hearing held before Judge Ellett wherein he made the findings and order requiring defendant to be committed to the State Hospital.

This finding of the defendant's mental condition was determined in the manner prescribed by law, that is, by the manner prescribed by *Chapter* 49 *of Title* 105, *Utah Code Annotated 1943*. The doctors were called and examined in accordance with the procedure outlined in that chapter. The physicians' certificate was executed and made of record in the case and it was determined by the court that the defendant was insane and should be committed to the State Hospital. As indicated in the quotation from Section 15 above, the defendant then could not be released from confinement in the State Hospital until the court after notice and hearing found and determined that his sanity had been restored. No contention has ever been made that defendant's sanity has been restored, and as a matter of fact, the testimony of the doctors indicated that there has been no improvement and there had been probably a "slipping back" of

the defendant's condition (33). It therefore appears from the express wording of the criminal statutes under which the defendant was committed that he was not entitled to be released from the State Hospital.

Defendant, through his mother and counsel, in the trial court contended that *Chapter* 113 of the *Laws of 1951* took precedence over the criminal statutes and that the court had the power and authority thereunder to order his release from the State Hospital to the agents of the Veterans' Administration in order that he might be transferred to the Veterans' Hospital at Sheridan, Wyoming. We are at a loss to know how the trial court could rule in favor of this contention in view of the express language contained in the applicable sections of that chapter.

The section under which these proceedings were commenced is *Section* 85-7-63, *Laws of Utah 1951.* That section provides:

> "If an individual *ordered to be hospitalized pursuant to the previous section* is eligible for care or treatment by any agency of the United States, the court, upon receipt of a certificate from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of such agency for hospitalization. When admitted to any facility or institution operated by any such agency within or without the state, he shall be subject to the rules and regulations of the agency. The chief officer of any facility or institution operated by such agency

> and in which the individual is hospitalized, shall with respect to such individual be vested with the same powers as the superintendent of the Utah state hospital with respect to detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned."

It is obvious that this section is not applicable to the defendant for two reasons. First, the defendant is not an individual ordered *to be* hospitalized. The defendant is a person who has been hospitalized since February 3, 1949. This is not a proceeding under 85-7-67(b), *Chapter* 113, *Laws of Utah 1951,* where the Department of Public Welfare is seeking to transfer or has transferred a patient in the State Hospital to an agency of the United States, and we do not believe that that department would have the power to do so in this case.

Second, the defendant was not ordered to be hospitalized pursuant to the previous section, which is *Section* 85-7-62 of *Chapter* 113, *Laws of Utah 1951.* The defendant was hospitalized under the procedure set forth in *Section* 105-25-15 and *Chapter* 49 *of Title 105, Utah Code Annotated 1943. Section* 105-25-15, *Utah Code Annotated 1943,* provides that the method to be followed in determining the sanity of the defendant is that pre-

scribed by law. This could only refer to the procedure outlined under the provisions of Chapter 49. Both this section and chapter relate to the criminally insane. Hence, from the very language of the section relied upon by defendant it has no application to the defendant.

Chapter 113 of the *Laws of Utah 1951,* specifically provides that it does not apply to the care of criminally insane. *Section* 4 of *Chapter* 113, *Laws of Utah 1951,* provides as follows:

> "Nothing contained in this act shall be construed to alter or change the method presently employed for the commitment and care of the criminally insane as provided in Chapter 49 of Title 105, Utah Code Annotated 1943."

We submit that this is a clear legislative declaration prohibiting application of this new law to persons committed to the State Hospital under the provisions of the Code of Criminal Procedure of the State of Utah.

This section does not specifically refer to Sections 105-25-15 and 16, but these sections are in the Code of Criminal Procedure and do not specify or detail the procedure to be followed in placing a person in the mental hospital. Section 15 merely states that a defendant found not guilty by reason of insanity must remain in the custody of the sheriff until his sanity is determined as provided by law. It then provides that if committed to the hospital he shall not be released until his sanity has been restored.

We submit that so far as possible where the insanity of a person charged with crime comes before the courts the law found in the Code of Criminal Procedure should be applied. This is so because society should be protected from persons who commit crimes and are insane. They should be detained in an institution until their sanity is restored, thereby minimizing the possibility of their committing crimes while irresponsible. The statutes in the Code of Criminal Procedure are geared to obtain this result. Actual practice has been to apply these statutes in such cases as this. The only statutes which set forth detailed procedure for commitment of persons charged with crimes are found in said Chapter 49 which is expressly excepted from the new law.

If this new law is followed, defendants may be released before sanity is restored. The case at bar is a very good example. Here is a man who has perpetrated an atrocious crime, that of rape on his own four year old daughter. He has been found not guilty because of his insanity and now is placed in a position where he can be released upon society still insane and commit further offenses for which he is not responsible.

There can be no question but what he can be taken out of the veterans' hospital at any time. Richard G. O'Rourke, Associate Attorney in the Chief Attorney's Office in the Salt Lake Regional Office, Veterans' Administration (18), testified that if habeas corpus proceedings were brought for defendant's release the Federal Government would not make a contest but would let the

defendant go (22). When the government accepts an individual for hospitalization it does so with no strings attached and he will be let go after determination that maximum hospital benefit has been achieved (22, 24).

The statute provides that the chief officer of the veterans' hospital is vested with the same powers as the superintendent of the Utah State Hospital. This is ineffective. What legal authority does the Utah Legislature have to vest powers in federal employees stationed in Wyoming? The question answers itself.

The statute also provides that the Utah courts shall retain jurisdiction to inquire into the mental condition of a person hospitalized in Wyoming and to determine the necessity for continuance of his hospitalization. Here again an attempt is made to give Utah courts extra territorial powers. After the defendant is hospitalized in a veterans' hospital outside of the State of Utah it is impossible for the Utah courts to exercise any control over him regardless of any provisions in Utah statutes. The doctors in the veterans' hospitals will release the defendant at any time they desire and will not contest habeas corpus proceedings.

If *Chapter* 113, *Laws of Utah 1951 should be made* applicable to persons charged with crime, then the very salutary provisions of the Code of Criminal Procedure would be eliminated. This would be to the detriment of society. The courts should retain jurisdiction and control over defendants who have been charged with crimes in order that their criminal propensities derived from in-

sanity could be curtailed until their sanity has been restored.

We submit that a reasonable construction of the statutes of this state, and giving full force to all provisions thereof, Chapter 113 should be held inapplicable to cases which reasonably come within the terms of the Code of Criminal Procedure of the State of Utah.

CONCLUSION

We have cited no case or text authorities in this brief because we feel that the statutes involved are sufficiently clear and one only need to understand the English language to conclude that the trial court committed obvious error in ordering the release of the defendant prior to the time that his sanity had been restored.

We submit that the order appealed from should be reversed with directions to the court to dismiss the proceedings instituted by the petition of the mother of the defendant seeking a transfer of the defendant from the Utah State Hospital to the Veterans' Hospital at Sheridan, Wyoming.

Respectfully submitted,

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